

Supreme Court, U. S.  
FILED

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MICHAEL RUDAK, JR., CLERK

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM 1976

No. **76-78**

BALTIMORE AND ANNAPOLIS RAILROAD COMPANY  
AND ELMER J. JUBB,  
*Appellants Below and Petitioners*

v.

INTERSTATE COMMERCE COMMISSION AND  
ALCO-GRAVURE, INC.,  
*Appellees Below and Respondents*

**PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF  
APPEALS FOR THE FOURTH CIRCUIT**

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Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered on April 19, 1976, affirming the issuance of a permanent mandatory injunction requiring Petitioners to rehabilitate a six-mile line of railroad and restore service thereover.

**OPINIONS BELOW**

The United States Court of Appeals for the Fourth Circuit affirmed *per curiam* the District Court. This opinion is annexed as Appendix A. The opinion of the United States District Court for the District of Maryland concluding that a mandatory injunction should issue is

reported at 398 F.Supp. 454 (1975). This opinion is annexed as Appendix B.

### **JURISDICTION**

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) (1966).

### **QUESTION PRESENTED**

May a business enterprise be compelled to rehabilitate at substantial expense a line of railroad rendered inoperable by an act of God when the only funds available to it for that purpose were derived from its non-railroad operations?

### **STATUTES INVOLVED**

The statutes involved are Sections 1(18) and 1(20) of the Interstate Commerce Act (49 U.S.C. §§ 1(18), 1(20)).

### **STATEMENT OF THE CASE**

On June 23, 1972, tropical storm "Agnes" destroyed the Patapsco River Bridge over which Petitioner, Baltimore and Annapolis Railroad Company (B&A), operates its railroad between Baltimore and Glen Burnie, Maryland.

In January 1973, B&A, having no funds from its rail operation which operated at a deficit for years, filed an application with the Interstate Commerce Commission for authority to abandon its rail operations.

Prior to decision on this application which was delayed inordinately for environmental reasons (see *Harlem Valley Transportation Ass'n. v. Stafford*, 360 F.Supp. 1057 (S.D.N.Y. 1973)) and upon complaint by the Interstate Commerce Commission, the United States District Court for the District of Maryland on May 12,

1975, entered an order directing B&A to rehabilitate its line of railroad (at a cost of some \$200,000) and to restore service thereover.

The District Court's decision was affirmed *per curiam* by the United States Court of Appeals for the Fourth Circuit, judgment entered April 19, 1976.

### REASONS FOR GRANTING THE WRIT

The decision of the Court of Appeals places directly at issue the viability of this Court's decision in *Brooks-Scanlon Co. v. Railroad Commission*, 251 U.S. 396 (1920). There, the Court held that a business enterprise may not be compelled to devote funds derived from non-rail sources to subsidize a deficit rail operation.

### CONCLUSION

The Court should grant the petition for a writ of certiorari to review the issues raised therein.

Respectfully submitted,

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